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3
4 **IN THE _____ COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF _____**

6
7 STATE OF OREGON
8 Plaintiff,
9 v.
10 _____
11 Defendant.
12
13

14 DOB: _____
15 SID: _____

16 CASE NO: _____

17 DA NO: _____

18 **ORDER FINDING THE DEFENDANT
UNABLE TO AID AND ASSIST AND
ORDER TO TRANSPORT IN CUSTODY
DEFENDANT TO THE OREGON STATE
HOSPITAL FOR TREATMENT
(ORS 161.370)**

19 This matter came before the Court on _____ for a determination of the
20 defendant's fitness to proceed pursuant to ORS 161.370.

21 The defendant appeared in custody, with counsel _____, OSB # _____
22 _____, and the State appeared through _____, OSB # _____
23 _____.

24 The Court finds that defendant is charged with the following offenses (listed in order of
25 seriousness by crime classification):

26 Crime Name: Crime ORS#: Felony/Misd/Viol: Maximum Sentence: Booking Date:

1.

2.

3.

4.

///

1 Based on the Court's review and consideration of:

2 The report of certified evaluator _____, dated _____
3 (ORS 161.365(3));

4 Consultation from the community mental health program (CMHP);

5 The Court's inquiry and observation of defendant at the hearing;

6 The defense counsel's representation;

7 Other information provided, to wit: _____.

8 **THE COURT** being fully informed **FINDS** the defendant lacks the fitness to proceed, as

9 defined by ORS 161.360(2), and:

10 1. In consideration of the primary and secondary release criteria (ORS 135.230), the least
11 restrictive option appropriate for the defendant, the needs of the defendant and the
12 interests of justice, commitment of the defendant is the appropriate action.

13 2. Defendant:

14 Is a danger to self or others as a result of a qualifying mental disorder; and
15 Requires a hospital level of care due to the defendant's dangerousness and the acuity
16 of symptoms of the defendant's qualifying mental disorder.

17 3. Based the consultation performed by the CMHP, services and supervision necessary to
18 allow the defendant to gain or regain fitness to proceed are not available in the
19 community.

20 4. The most serious offense in the charging instrument is a:
21 Felony; or
22 Misdemeanor, and _____ certified evaluator/_____ community mental health
23 program has determined that the defendant _____ does/_____ does not require a hospital
24 level of care due to the defendant's dangerousness and the acuity of the symptoms of the
25 defendant's qualifying mental disorder.

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1 It is therefore **ORDERED**:

- 2 1. The criminal proceeding in the aforementioned matter against the defendant is
3 suspended;
- 4 2. Defendant is committed to the custody of the Superintendent of the Oregon State
5 Hospital (OSH) for treatment.
- 6 3. The _____ County Sheriff shall TRANSPORT defendant from the County
7 Jail to OSH in Salem, Oregon and shall return the defendant to the county jail upon
8 notification from OSH.
- 9 4. The Superintendent shall:
 - 10 a. Cause defendant to be evaluated within 60 days of defendant's delivery into the
11 custody of the Superintendent for the purpose of determining whether there is a
12 substantial probability that, in the foreseeable future, defendant will have the
13 capacity to stand trial. ORS 161.370(8).
 - 14 b. Immediately notify the Court if the defendant, at any time, gains or regains the
15 capacity to stand trial or will never have the capacity to stand trial
 - 16 c. Within 90 days of the defendant's delivery to the Superintendent's custody, notify
17 the Court that:
 - 18 i. The defendant has the present capacity to stand trial; or
 - 19 ii. There is a substantial probability in the foreseeable future the defendant will
20 gain or regain the capacity to stand trial and give the court an estimate of time
21 in which the defendant is expected to gain or regain capacity; or
 - 22 iii. If there is no substantial probability that in the foreseeable future, the
23 defendant will gain or regain the capacity to stand trial.
 - 24 d. Submit a progress report update to the court concerning the defendant's capacity
25 or incapacity at least once every 180 days (as measured from the date of

1 defendant's delivery into the Superintendent's custody) for the duration of the
 2 defendant's commitment; and

3 e. Notify the court if the Superintendent determines that defendant is no longer
 4 dangerous to self or others due to a qualifying mental disorder, no longer requires
 5 a hospital level of care due to acuity of symptoms from defendant's qualifying
 6 mental disorder, or that the supervision and services necessary to restore
 7 defendant's fitness to proceed are available in the community, the superintendent
 8 shall file notice of that determination with the court.

9 5. A defendant's commitment to OSH shall be no longer than the maximum sentence the
 10 court could have imposed if the defendant had been convicted or three (3) years,
 11 whichever is less (ORS 161.370(10)(a)). Also, HB 2308 (2017) requires the court to give
 12 credit for time in jail to defendants who are not charged with a crime listed in ORS
 13 137.700(2). This defendant ____ is/is not____ charged with a crime listed in ORS
 14 137.700(2). Therefore:

15 a. The maximum commitment to OSH while unable to aid and assist is:

- 16 i. 3 years (if charges are Felony C, B, or A), or
- 17 ii. 1 year (Misdemeanor A), or
- 18 iii. Other _____(maximum of pending charges)

19 b. The effective date for calculating this legal status is:

- 20 iv. Date committed to OSH (date order signed)_____, or
- 21 v. Date of arrest/booking of _____, or
- 22 vi. Date committed to OSH subtracting/giving credit for ____days of
 23 confinement.

24 (Court relies upon the date provided by the _____ County Sheriff's Department records for
 25 calculation of time in custody since initial booking date.)

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1 6. Any public and any private medical provider in possession of records concerning the
2 defendant release those records to OSH for the purpose of, and use in, restoring
3 defendant's fitness to proceed. These documents shall be provided to OSH within 5
4 business days of receipt of this order. The Oregon Youth Authority, the Department
5 of Corrections, a community college district or service district, a public university, a
6 school or education service district may, after notifying the state hospital, comply
7 with the court order within 15 business days of receipt of this order.

8 7. The District Attorney, defense attorney, and _____ County Sheriff/jailer shall provide
9 all non-privileged pertinent information about defendant to the OSH within 5 business
10 days of this court order.

11 8. The notices and reports and updates of the examination and/or defendant's progress in
12 treatment shall be filed electronically in the Oregon Judicial Department's Ecourt system
13 with the Clerk of the Court for _____ County.

14 9. In addition, OSH shall provide _____ County Mental Health Department with its
15 reports and updates regarding defendant for continuity of care purposes.

16 Further proceedings are set for hearing in Courtroom _____ on _____ at _____.

17
18 DATED: _____

19 Circuit Court Judge

20
21 Defense Attorney
Name: _____
Address: _____
Email: _____
22 Ph. No.: _____
23
24
25
26

Deputy District Attorney
Name: _____
Address: _____
Email: _____
Ph. No.: _____